



Legal Update

August 2016

“An Act Relative to Protective Custody” Signed Into Law

Chapter 161 of the Acts of 2016 was enacted into law on July 25, 2016 and is effective immediately!

Chapter 111E of the Massachusetts General Laws is amended by inserting **Section 9A** which is listed below. This bill adds a new section addressing persons who are incapacitated due to a substance other than alcohol.

Definition: Under the provision of the new statute, “incapacitated” now includes a person who has consumed a substance other than alcohol if, as a result of that substance, that person is any one of the following:

- a. Unconscious
- b. In need of medical attention
- c. Likely to suffer or cause physical harm or damage property
- d. Disorderly

Determination of Incapacitation: A police officer may ask a person to consent to reasonable tests that involve coordination, coherency of speech and breath to determine if the person is

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.

incapacitated. If the police officer determines that person is incapacitated based on observations or performance of the tests, the person can be placed in protective custody.

Protective Custody: Without a person's consent, a police officer can take a person into protective custody for immediate transport to an acute care hospital or satellite emergency facility or to obtain immediate emergency medical treatment.

- Minors in Protective Custody: If a police officer places an individual under the age of 18 in protective custody, parents or a guardian must be notified.
- Time of restraint: A person cannot be held in protective custody beyond the time required to complete the transport of the individual to an acute care hospital or satellite emergency facility or to obtain immediate emergency medical treatment. The legislation does not provide a time frame for how long may reasonably be taken for transportation or medical treatment.
- Use of Force: A police officer can use force that is reasonable for the officer to place person in protective custody. If there is safety risk to the incapacitated person, to the officer or other people who are present, a police officer can use reasonable force to place the person in protective custody. A police officer can search the person and the immediate areas surrounding the person and seize items or weapons that may pose a danger. All items shall be inventoried and returned to a person when they are no longer "incapacitated." Items that are not legally possessed will not be returned to the person.
- Documentation: Any person who is placed in protective custody is not arrested. Police officers are required to document the date, time, place of custody, name of assisting officer and officer in charge. This information will not be collected for entry as a criminal arrest.

Commentary: If a subject has been revived using naloxone ("Narcan") and has regained consciousness, it may still be appropriate to place the subject into protective custody and transport that subject for medical attention, if the training and experience of the officer indicate that further medical attention is appropriate. In such a situation, the consent of the subject is not required, as the protective custody authority granted by the statute trumps the desire of the incapacitated subject. It may be advisable for departments to seek a written medical guidance regarding this type of situation, so that officers can apply a consistent policy.

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